



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DOVER POLICE ASSOCIATION	:	
	:	
Complainant	:	
	:	CASE NO. P-0714:4
v.	:	
	:	DECISION NO. 92-121
CITY OF DOVER	:	
	:	
Respondent	:	

APPEARANCES

Representing Dover Police Association:

J. Joseph McKittrick, Esq., Counsel

Representing City of Dover:

Mark Broth, Esq., Counsel

Also appearing:

Gail McGlone, Association
Brenda Blonigen, Association
Thomas Powers, Association
Bill Fenniman, City
Bill Wardwell, City

BACKGROUND

The Dover Police Association (Union) filed unfair labor practice (ULP) charges against the City of Dover (City) on March 9, 1992 alleging violations of RSA 273-A:5 I (a), (c), (e), (g), (h) and (i). The City denied the commission of a ULP when it filed its answer on March 20, 1992. This matter was heard by the Board on June 2, 1992.

FINDINGS OF FACT

1. The City of Dover is a public employer as defined by RSA 273-A:1 X and employs sworn police officers and other employees in its police department.
2. The Dover Police Association is the duly certified bargaining agent of sworn police officers and other employees of the Dover Police Department.
3. At all times pertinent to these proceedings the City and the Union were parties to a collective bargaining agreement (CBA) for the period July 1, 1989 through June 30, 1992. Under CBA Article V, "Salaries," employees qualify for merit increases based upon three factors, one of which is an annual rating by their supervisor(s) which counts 40%.
4. Annual merit pay evaluations have traditionally and historically been performed by sergeants, lieutenants, captains, and other individuals in a superior officer capacity.
5. At times pertinent to this complaint, the City has asked bargaining unit members to serve as acting supervisors or supervisory officers. Acting supervisors are required to perform all the duties of a regular supervisor of the same rank and assignment. As such, acting supervisors have been asked to and have completed annual evaluations on other employees in the same bargaining unit, a practice which prompted this ULP as an alleged violation of RSA 273-A:8 II.
6. The annual merit review evaluation process impacts both merit pay awards and promotional opportunities.
7. Annual merit evaluations are reviewed by division commanders after being prepared by supervisors. These evaluations are not finalized until the Chief of Police completes his review and makes his determination as to merit increases and promotions.

DECISION AND ORDER

This Board has been and continues to be a strong adherent to the supervisory-subordinate dichotomy found at RSA 273-A:8 II. While we would discourage the utilization of bargaining unit personnel as supervisors on more than a temporary basis, we recognize that such utilization sometime becomes a necessity to

maintain staffing requirements as is protected under RSA 273-A:1 XI. When bargaining unit members are used as acting supervisors on a temporary basis, it is reasonable for the public employer to expect that they are able and competent to discharge the duties of the position they are filling in that temporary capacity. Likewise, the public employer is expected to maintain sufficient flexibility in its operations to be able to delay or re-schedule such activities as annual evaluations by a non-unit supervisor if such a supervisor is expected to be available in the foreseeable future. This eliminates any confusion as to the long-term consequences of a unit member discharging responsibilities in an acting supervisory capacity and, thus, any intra-unit hostilities.

Under the circumstances of this case, evaluations of unit employees by other unit employees in an acting supervisor capacity were limited in number. They were not a sufficient portion of the rater's job responsibilities to be a "significant exercise of discretion" under RSA 273-A:8 II. They were subject to two additional levels of review, at the division level and by the Chief, before being finalized. If a temporary supervisor were taking advantage of a situation by the manner in which he or she rated fellow unit employees, the built-in safeguards were more than ample, if needed at all, to provide for appeals to and review by higher levels of authority. The facts presented to this Board simply do not rise to a level to cause us to find that a ULP has been committed.

The charge of unfair labor practice is DISMISSED.

So Ordered.

Signed this 27th day of October, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine, presiding.
Frances LeFavour and E. Vincent Hall present and voting.